



Final Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50 – 22
Regulation title	Board for Contractors Regulations
Action title	General Review
Date this document prepared	December 21, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Board for Contractors (the Board) seeks to amend its current regulations to respond to statutory changes, clarify previous regulations and respond to changes in the industry. With the exception of regulations promulgated due to the amended of the statutes requiring pre-license education for contractors in 2008, the last non-fee related regulatory change was made in 2003.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board for Contractors adopted, as final, these proposed amendments to the Board for Contractors Regulations at its meeting of December 8, 2009.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Recent statutory changes, regulatory amendments and policy changes made by other state agencies that directly affect the regulant population of the Board, as well as changes in the industry, warrant review and promulgation of regulations to ensure that they accurately reflect current requirements and standards and that they are consistent and clear. Ensuring that the regulations are as clear as possible will facilitate the regulations' compliance with the statutes and Board's requirements, which will better protect the health, safety, and welfare of the public.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

General clarifying changes to the regulations. Also amending the Board's regulations as they relate to water well contractors to incorporate statutory changes that established water well systems provider certification. The Board will also review the renewal and reinstatement requirements to address issues related to individual license and certification and trades-related contractors whose qualified individuals no longer have current licenses. In addition, the following are to be reviewed:

18 VAC 50-22-10 (General definitions), 18 VAC 50-22-20 (Definitions of license classification) and 18 VAC 50-22-30 (Definitions of specialty services): General definitions and definitions of classifications and specialties were amended to reflect changes in the industry and amendments and policy changes made by other state agencies that directly affect the regulant population of the Board.

18 VAC 50-22-40(B), 18 VAC 50-22-50(C), and 18 VAC 50-22-60(C): Amending the eligibility criteria for the Qualified Individual requiring a written examination that determines whether the individual has a knowledge of the specialty reasonable for the qualification of the person completing the work and the risks associated with the work being performed.

18 VAC 50-22-70: Amending the regulations to include substantial equivalency as a means of determining that eligibility criteria has been met.

18 VAC 50-22-210: Amending the regulations to require specific actions are taken by a company upon termination or dissolution of the business.

18 VAC 50-22-230: Amending the regulations to clarify the principal place of business.

18 VAC 50-22-260: Amends the prohibited acts to specifically include failure of a contractor to obtain a building permit or inspection, to fail to respond to an agent of the Board and allows the Board to determine improper and dishonest conduct as a violation.

Other changes which may be necessary may also be considered.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, clarify existing requirements, respond to statutory changes and respond to changes in the industry. Currently the Board's staff spends a considerable amount of time processing applications and providing guidance to both the regulant population and the general public in those areas impacted by these proposed amendments. Promulgation of these changes will decrease the contact required with this regulants, which should have an increase in the amount of time staff can dedicate to application processing, subsequently reducing the current waiting time experienced by all applicants.

The Board for Contractors must promulgate regulations that provide an adequate level of protection to the public while, simultaneously ensuring that individuals and businesses are not given unnecessary burdens to licensure. Amendments to the

eligibility requirements for licensure are intended to further strengthen that protection and, while these amendments may raise some concerns within the regulated community, and thus become a matter of interest, they will not likely be looked at as being overly burdensome to most of the regulant population or the industry.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
50-22-50 D	Increased the net worth requirement for Class B contractors to \$50,000.	The proposed increase was removed and the current requirement of \$15,000 remains in place.	Based on public comment.
50-22-60 D	Increased the net worth requirement for Class A contractors to \$100,000	The proposed increase was removed and the current requirement of \$45,000 remains in place.	Based on public comment.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Comment	Regulation Number	Commenter’s Name and Affiliation	Board Response
Concern with the increase in net worth requirements for Class A and Class B Contractors. Predicts a drop in the regulant population of classes as well as abandoned projects and poor performance. Recommends a 10% increase in the net worth requirements resulting in a net worth requirement of \$49,500 for Class A and \$16,500 for Class B.	18VAC50-22-50 18VAC50-22-60	Barrett Hardiman Home Builders Association of Virginia	The Board is sensitive to your comment regarding the extra burden an increase in the net worth would cause, especially with the current economic climate in the construction industry. However, the Board feels strongly that the net worth requirements, which have not changed in over a decade, may be a contributing factor to the number of consumers who are subject to monetary loss at the hands of contractors who did not have sufficient net worth to perform the work allowed by their
Agrees with definitions added as well as	18VAC50-22-10 18VAC50-22-20		

<p>clarifications of current definitions.</p>	<p>18VAC50-22-30</p>		<p>license. The Board will remove the proposed increases from this regulatory action and will explore the matter again at a later date.</p>
<p>Concern with the increase in net worth requirements for Class A and Class B Contractors. Predicts a drop in the regulant population of both classes and an increase in unlicensed activity.</p>	<p>18VAC50-22-50 18VAC50-22-60</p>	<p>Tyler Craddock Virginia Chamber of Commerce</p>	<p>The Board is sensitive to your comment regarding the extra burden an increase in the net worth would cause, especially with the current economic climate in the construction industry. However, the Board feels strongly that the net worth requirements, which have not changed in over a decade, may be a contributing factor to the number of consumers who are subject to monetary loss at the hands of contractors who did not have sufficient net worth to perform the work allowed by their license. The Board will remove the proposed increases from this regulatory action and will explore the matter again at a later date.</p>
<p>Concern with the increase in net worth requirements for Class A and Class B Contractors. Feels there will be unintended consequences, but did not elaborate.</p>	<p>18VAC50-22-50 18VAC50-22-60</p>	<p>Robert Kuramoto</p>	<p>The Board is sensitive to your comment regarding the extra burden an increase in the net worth would cause, especially with the current economic climate in the construction industry. However, the Board feels strongly that the net worth requirements, which have not changed in over a decade, may be a contributing factor to the number of consumers who are subject to monetary loss at the hands of contractors who did not have sufficient net worth to perform the work allowed by their license. The Board will remove the proposed increases from this regulatory action and will explore the matter again at a later date.</p>

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
18 VAC 50-22-10			<p>Adds "Address of record" to the list of defined terms. This change is being proposed to address situations presented to the Board during legal proceedings brought about through the appeal process. The addition of this definition to the regulations identifies the address that is used by the Board in official notices.</p> <p>Adds "Change order" to the list of defined terms. This change is being proposed to clarify a prohibited act found in 18 VAC 50-22-260 B 31.</p> <p>Adds "Principal place of business" to the list of defined terms. This changes is added as a companion to "address of record," in order to differentiate the two terms.</p> <p>Adds "Prime Contractor" to the list of defined terms. Current statutes and regulations relating to the licensure of contractors in Virginia, does not specifically identify general contractors. The term "prime contractor" is generally used with the public and licensees. The addition of this definition places the term in the regulations.</p> <p>Adds "Virginia Uniform Statewide Building Code" to the list of defined terms. This portion of the VAC is the measurement standard for most work completed in Virginia and has never been specifically identified in the regulations, although licensees are required to adhere to those standards.</p>
18 VAC 50-22-20			<p>Amends the definition of "Building contractors" to remove the term "general contracting" and clarify it by indicating that</p>

		<p>a contractor with the building classification may perform work as a “prime” contractor. The removal of “general contractor” from the regulations is to help alleviate confusion that is experienced by those applying for a license. Several other states actually have a special license for “general contractors” with different eligibility criteria than regular licenses. The Board receives several hundred emails per year and countless other telephone calls from applicants and potential applicants that are confused when it is revealed that Virginia does not have a special license for general contractors, yet the term appears in the regulations. This modification, along with the addition of the definition of prime contractor should help reduce the confusion.</p> <p>In addition to the above cited amendment, the four additional specialties are added to the scope of practice for contractors with the building classification as contractors with this classification are qualified to perform work in these specialties. The modular/manufacture building contractor specialty is removed as these regulations propose the deletion of the specialty, in the previous section.</p> <p>The definition of the scope of practice allowed contractors with the electrical classification is amended by adding a reference to the Virginia Uniform Statewide Building Code and a statement that all such contractors must ensure that they also comply with the individual licensing (tradesman) standards.</p> <p>The definition of the scope of practice allowed contractors with the HVAC classification is amended by adding a reference to the Virginia Uniform Statewide Building Code and a statement that all such contractors must ensure that they also comply with the individual licensing (tradesman) standards.</p> <p>The definition of the scope of practice allowed contractors with the plumbing classification is amended by adding a reference to the Virginia Uniform Statewide Building Code and a statement that all such contractors must ensure that they</p>
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			<p>also comply with the individual licensing (tradesman) standards. Additionally, a new provision is added to address the expansion of the current scope of practice regarding the installation of fire sprinkler systems that is currently allowed by the USBC, but will be expanded in the 2009 update. This policy is already in place, but the proactive inclusion of this policy in the regulations will alleviate the necessity of going into regulatory review when the 2009 International Plumbing Code is incorporated into the Building Code.</p>
<p>18 VAC 50-22-30</p>			<p>The definition of the scope of practice allowed contractors with the Alternative Energy Systems specialty is amended to clarify that these contractors are not permitted to work on generators that are fueled by propane, natural gas, diesel fuel or any other fossil fuel. This installation of equipment that involves trade-related work (plumbing, electrical, HVAC or gas-fitting) would not be permitted by this specialty; however, there was some confusion in the field with regards to whether this would be considered trade-related work. This amendment clarifies the issue and further defines the scope of practice.</p> <p>The definition of the scope of practice allowed contractors with the Elevator/Escalator specialty is amended to include the requirement that these contractors also meet the individual certification standards. This amendment is necessary in order to comply with the statutory requirements set forth in § 54.1-1140 et seq. of the code of Virginia (Certified Elevator Mechanics).</p> <p>The definition of the scope of practice allowed contractors with the Fire Sprinkler specialty is amended to include a corrected reference to the USBC as well as clarification of backflow device installation licensing requirements.</p> <p>The definition of the scope of practice allowed contractors with the Gas Fitting specialty is amended to ensure that they must also comply with the individual licensing (tradesman) standards.</p> <p>The definition of "Industrial Building</p>

			<p>Contracting” is added as an independent specialty. Currently, contractors installing industrial buildings, also called modular, are licensed under the Manufactured/Modular building contractors specialty. The implementation by the Department of Housing and Community Development of new HUD standards for those who install manufactured homes necessitates the breakout of modular contractors. The new HUD regulations would add requirements to the current licensing scheme that would be overly burdensome and unnecessary for those currently only installing modular structures. The breakout of the specialty will allow these contractors to continue to install modular buildings without having to meet these new requirements.</p> <p>The definition of the scope of practice allowed contractors with the Landscape Service specialty is amended to clarify that these licensees may remove tree stumps and roots below grade level. This clarification is added based on comments received during the course of the last several years, from contractors with this specialty, who have experienced difficulties with customers and building officials regarding what they are permitted to complete with their license. In addition, contractors with the Highway/Heavy classification are identified as a licensee that may perform this work.</p> <p>The definition of the scope of practice allowed contractors with the Liquefied petroleum gas specialty is amended to ensure that they must also comply with the individual licensing (tradesman) standards.</p> <p>The definition of “Manufactured Home Contracting” is added as an independent specialty. Currently, contractors installing manufactured homes are licensed under the Manufactured/Modular building contractors specialty. The implementation by the Department of Housing and Community Development of new HUD standards for those who install manufactured homes necessitates the breakout of manufactured home contractors into their own specialty. This will allow the Board for Contractors and the</p>
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			<p>Department of Housing and Community Development to ensure compliance with the new HUD requirements by isolating the specialty and not allowing any other specialty to perform the work.</p> <p>The definition of Modular/manufactured building contractors is deleted from the regulations. This amendment is made as the specialties have been broken out individually and the current definition is no longer necessary or valid.</p> <p>The definition of the scope of practice allowed contractors with the Natural Gas Fitting Provider specialty is amended to ensure that they must also comply with the individual licensing (tradesman) standards.</p> <p>The definition of the scope of practice allowed contractors with the Water Well/Pump specialty is amended to add geothermal wells drillers. Since geothermal wells can penetrate the formations or parts of a formation that contain sufficient saturated, permeable material to yield significant quantities of water to wells and springs, contractors that perform such work must be trained in order to ensure that these formations are not contaminated, thus putting the public at risk from contaminated drinking water. By including them in this specialty, it will ensure that personnel performing the work are properly educated and have sufficient experience to complete such tasks.</p>
<p>18 VAC 50-22-40</p>		<p>Qualified Individuals must pass a trade-related examination, completed education and training requirements for eight of the over 40 specialties.</p>	<p>Qualified Individuals would be required to continue to meet the current requirements for those eight specialties. All other specialties will require that the Qualified Individual complete a Board approved examination. Since FY 2003 the Board has adjudicated over 5000 disciplinary cases against licensed contractors, of these cases 47% involve competency issues, which would amount to approximately 2400 cases. This does not include the nearly 1000 complaints per year received by the Board for workmanship issues that must be resolved in civil court, but do not quite rise to the level of a disciplinary case. Using the standard of \$3000 per adjudicated case, which is based on Board costs and</p>

		<p>personnel costs (including man hours and other related expenses), the Board has spent nearly \$7 million on these cases in the last six Fiscal Years. While the inclusion of a written examination as a requirement for licensure does not guarantee that all contractors will be competent in their specialties, it does provide a certain level of measurement that will help the Board insure that one must be minimally qualified to perform certain work. At the present time, with the exception of the eight specialties that already require additional eligibility criteria, Qualified Individuals need only provide three references that can attest to work performed by the contractor. These attestations do not provide enough verification to the Board to ensure competency. Currently, several states have examinations that are required of contractors that are based on their specialties. Currently, several states require examination of some or all of the specialties where licenses are offered (not all states regulate contractors at the state level, several are regulated at the local level). Those that require specialty examinations include: California, Arizona, Florida, North Carolina, Tennessee, Alabama, West Virginia, South Carolina and others. For those specialties that already include qualifications that must be met, those requirements are moved from Board policy to the regulations, such as NICET Sprinkler III certification for Fire Sprinkler Contractors, DEQ/EPA certification for Radio mitigation contractors, etc.</p>
<p>18 VAC 50-22-50</p>		<p>Qualified Individuals would be required to continue to meet the current requirements for those eight specialties. All other specialties will require that the Qualified Individual complete a Board approved examination. Since FY 2003 the Board has adjudicated over 5000 disciplinary cases against licensed contractors, of these cases 47% involve competency issues, which would amount to approximately 2400 cases. This does not include the nearly 1000 complaints per year received by the Board for workmanship issues that must be resolved in civil court, but do not quite rise to the level of a disciplinary case. Using the</p>

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<p>18 VAC 50-22-60</p>		<p>Qualified Individuals must pass a trade-related examination, completed education and training requirements for eight of the over 40 specialties.</p>	<p>Qualified Individuals would be required to continue to meet the current requirements for those eight specialties. All other specialties will require that the Qualified Individual complete a Board approved examination. Since FY 2003 the Board has adjudicated over 5000 disciplinary cases against licensed contractors, of these cases 47% involve competency issues, which would amount to approximately 2400 cases. This does not include the nearly 1000 complaints per</p>

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<p>18 VAC 50-22-70</p>			<p>This amendment provides that the Board, in addition to agreements of reciprocity, may accept substantially equivalent eligibility criteria. There are several states that do not wish to enter into a complete agreement of reciprocity, however, the Board feels that the eligibility criteria of some of those states are the same as Virginia; in some instances the same</p>

			examination is given. In an effort to provide additional avenues of eligibility to candidates for licensure, the Board has amended this section to include substantial equivalency.
18 VAC 50-22-210		There is no requirement that a contractor license becomes void upon the formation of a new business entity nor that the contractor return the original license to the Board once an entity is converted to a new form.	<p>Contractor licenses are issued to business entities, not to individuals, although it can be confusing when dealing with sole proprietorships, it is still a business entity. When a licensee changes from one entity to another (i.e. sole proprietor to LLC, LLC to corporation, etc.) it is necessary for the new entity to obtain its own license. The Board for Contractors receives approximately 500 notifications per year from contractors that are changing their form of business entity or that have already formed a new entity and have not completed the appropriate notifications. Even after the situation is corrected, many contractors are confused that they have been sent a new license and they often use the incorrect license or even try to renew it. By voiding the “old” license and requiring the contractor to send it back to the Board, this confusion should be reduced, if not eliminated.</p> <p>Additionally, the word “conversion” was added to the examples of entity changes. This amendment is proposed in an effort to clarify the types of actions that are taken by an entity that would then require a new license to be obtained.</p>
18 VAC 50-22-230			The change of address requirement is clarified to add that it includes both the address of record or principal place of business that must be reported to the Board within 30 days of a change.
18 VAC 50-22-260		Currently requires that improper or dishonest conduct be found by a court of competent jurisdiction.	This particular prohibited act (18 VAC 50-22-260 B 7) is being amended to include the Board for Contractors as an additional authority to determine improper or dishonest conduct. Currently, as required by § 54.1-1120 A 7, the Board is responsible for this determination in Transaction Recovery Fund cases, where the judgment obtained by the claimant does not indicate that it was based on improper or dishonest conduct. Since the Board is already doing this as part of Recovery Fund determinations, the Board proposed to amend the regulations to add

		<p>18 VAC 50-22-260 B 13 provides that failure to respond to an investigator is a violation of the regulations.</p>	<p>the same authority in disciplinary cases.</p> <p>Amends this prohibited act to include the failure to respond to an agent of the Board as well as an investigator. Currently it is not a violation of the regulations to fail to respond to an inquiry made by the Board itself, only an investigator. This amendment corrects this issue. Additionally, a statement is added that failing to claim certified mail sent by the Board, shall also be deemed a failure to respond. An increasingly large amount of licensees being investigated by the Board will knowingly fail to pick up certified mail in an effort to use the fact that "it wasn't received" as a positive defense against disciplinary action and/or subsequent appeals to the Circuit Court. This defense has failed at both levels; however the addition of this statement will make it easier to defend the Board's actions when required.</p> <p>At the present time there is no specific prohibited act that addresses the failure to obtain a building permit or inspection, when required. The Board currently classifies this under the misconduct provision of the prohibited acts. Building Officials and investigators have requested that the Board add this as a new prohibited act (18 VAC 50-22-260 B 33) in an effort to identify the violation on its own. Contractors that are reviewing the regulations will see that it is a violation to not obtain permits and will likely then comply.</p>
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Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

- 1) There are three common methods for determining competency generally accepted in the licensing requirements for individuals in the construction industry: a) written examination; b) practical examination; and, c) independent third party inspection/review of completed work in the scope of the licensing requested. The Board uses all three of these, in various combinations, throughout its licensing programs and is always looking for a method to determine minimum competency that is the least burdensome to the regulant while, at the same time, affording the protection to the public expected of regulatory boards. The Board believes that these amendments are the least stringent that can be promulgated that will still deliver that protection.
- 2) There are no deadlines or reporting requirements required by these proposed regulations.
- 3) There are no reporting requirements proposed by these regulations.
- 4) There are no performance standards proposed by these regulations.
- 5) The vast majority of contractor businesses licensed by the Board would be identified as small businesses and, since the Board finds the least burdensome alternative in the development of its regulations, it has taken into consideration the affect on small business, negating the need for an exemption.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These proposed regulations would have no impact on the authority and rights of parents in the education, nurturing and supervision of their children; nor would they strengthen or erode the marital commitment. This program allows individuals to form business entities for the purpose of completing construction projects. The inclusion of an examination for those specialties that do not already have a license/examination requirement may result in an initial licensure expense to the licensee, it will help ensure that licensed contractors in all specialties, not just a few, can demonstrate a level of minimum competency. This will have an overall increase in economic self-sufficiency and disposable income as licensees with competency issues are often required to perform a job more than once, an inconvenience and cost to both the licensee and the consumer. Competent contractors are more successful and, as such, have a higher degree of economic self-sufficiency and disposable income.